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No. 70

In the Supreme Court of the United States

OCTOBER TERM, 1941

IRA TAYLOR, APPELLANT

v.

THE STATE OF GEORGIA

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

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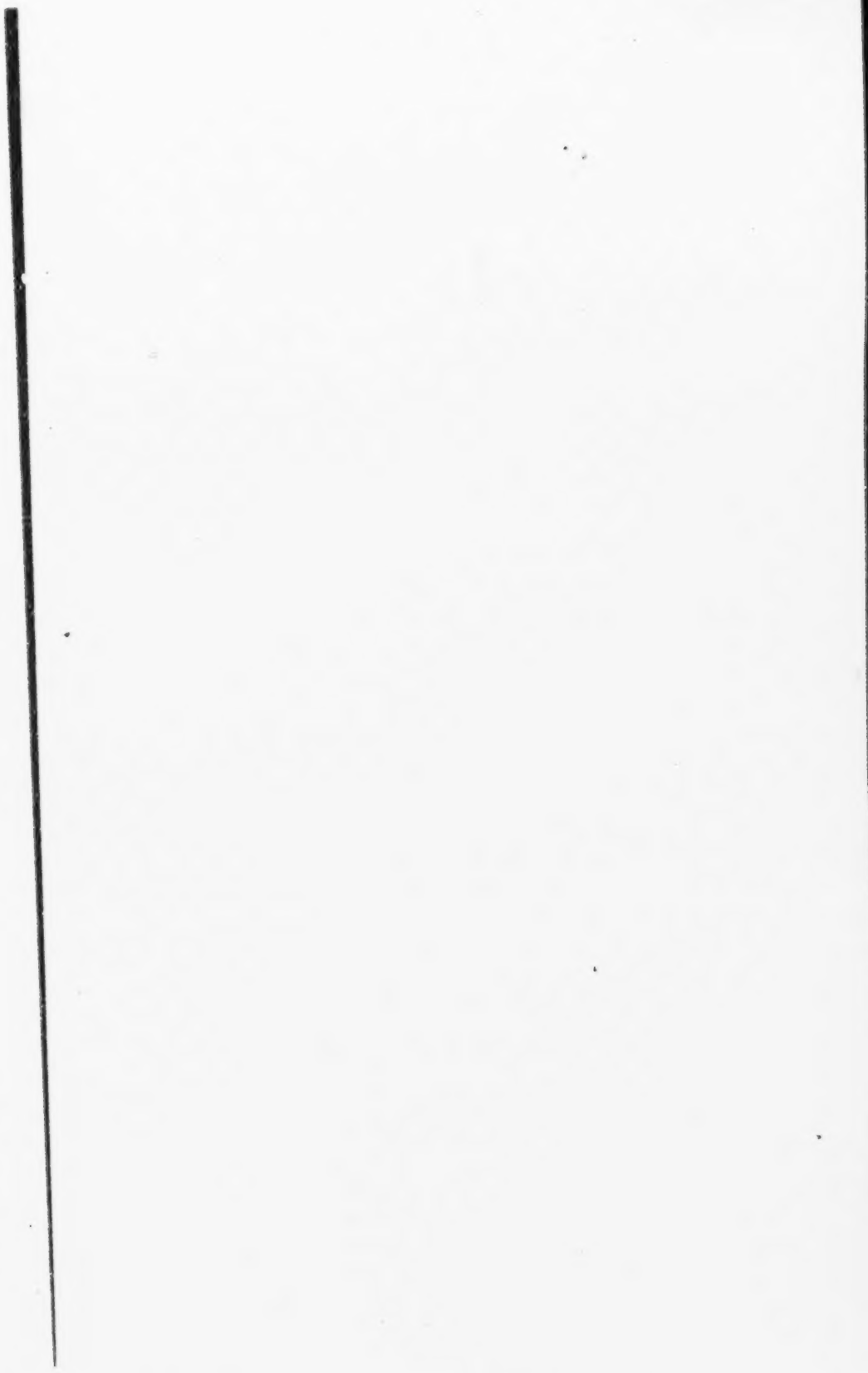

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PRELIMINARY STATEMENT[1]

The Georgia statute here involved[2] provides in substance that any person who contracts to perform service for another with intent to procure money thereby and not to perform the service, or who, after having so contracted, procures money

[1] The facts, which are not disputed, are adequately set forth in the brief for appellant, pages 4–8.

[2] Act of August 15, 1903, Ga. Laws 1903, pp. 90–91; Ga. Code 1933, secs. 26–7408, 26–7409, copied at pages 2–3 of appellant's brief.

from the hirer with intent not to perform the service, shall, upon conviction, be subject to criminal punishment; and that proof of the contract, the procuring thereon of money, and failure to perform the service or return the money with interest, without good and sufficient cause, shall be deemed presumptive evidence of such intent.

We agree with the contentions of appellant that the statute contravenes the Thirteenth Amendment and the federal legislation prohibiting peonage. We think, also, that the Georgia statute violates the Fourteenth Amendment in that it creates an arbitrary and unreasonable presumption of guilt. The invalidity of the statute in these respects is discussed at pages 3–8.

The chief interest of the United States in this case lies in the fact that the Georgia statute hinders the enforcement in that State of federal criminal statutes safeguarding civil rights secured by the Constitution and laws of the United States. The Department of Justice is charged with the responsibility of enforcing the following sections of the Criminal Code: Section 269 (18 U. S. C.,

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[1] Act of March 2, 1867, c. 187, 14 Stat. 546; Rev. Stat., sec. 1990, 8 U. S. C., sec. 56; Rev. Stat., sec. 5 [illegible], Criminal Code, sec. 269, 18 U. S. C., sec. 444. This legislation declares that all laws of any state, by virtue of which any attempt should be made "to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise," shall be null and void, and punishes criminally the holding of any person in peonage.

sec. 444), prohibiting the holding or returning of any person to a condition of peonage; Section 268 (18 U. S. C., sec. 443), prohibiting the carrying away of any person to be held as a slave; Section 19 (18 U. S. C., sec. 51), prohibiting conspiracies to injure or oppress any citizen in the exercise of rights or privileges secured by the Constitution and laws of the United States; and Section 20 (18 U. S. C., sec. 52), prohibiting the deprivation of such rights under color of state law.

Recent federal investigations in Georgia have disclosed that the involuntary service of debtors has been coerced in whole or in part by the threat of prosecution under the state statute. In the face of colorable legality under the state law of such enforced labor in liquidation of debts, it is impossible as a practical matter to obtain indictments and convictions and the result has been that the federal statutes have been rendered nugatory. It is for this reason, principally, that the Department appears in this case, as *amicus curiae,* in support of the appeal.

ARGUMENT

I

THE GEORGIA STATUTE VIOLATES THE THIRTEENTH AMENDMENT AND THE FEDERAL LEGISLATION PROHIBITING PEONAGE

In terms and effect the Georgia statue is identical with the Alabama statute held invalid in

Bailey v. *Alabama*, 219 U. S. 219.[4] Like that statute, the Georgia law purports to be aimed at a species of fraud on employers—the procurement of an advance with intent not to perform the agreed service—but permits proof of that intent, which is the gravamen of the offense, to be supplied merely by a presumption that the intent existed if the services were not performed or the money refunded "without good and sufficient cause." However, as this Court said in the *Bailey* case, proof of these facts establishes merely a breach of contract for personal service (219 U. S., at 233–234). These facts are, of course, as consistent with an initial innocent intent as with a fraudulent intent and without more would require an acquittal.[5] Nevertheless, by virtue of the stat-

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[4] The Alabama statute (Alabama General Acts, 1907, pp. 636–627; see 219 U. S., at 227–228) provided that "Any person, who with intent to injure or defraud his employer, enters into a contract in writing for the performance of any act of service, and thereby obtains money * * * from such employer, and with like intent, and without just cause, and without refunding such money, * * * refuses or fails to perform such act or service, must on conviction be punished * * *. And the refusal or failure of any person, who enters into such contract, to perform such act or service * * * or refund such money, * * * without just cause shall be prima facie evidence of the intent to injure his employer * * * or to defraud him."

[5] The Georgia Code, 1933, Sec. 38–109, provides: "To warrant a conviction on circumstantial evidence, the proved facts shall not only be consistent with the hypothesis of guilt, but shall exclude every other reasonable hypothesis save that of the guilt of the accused." See also *Cooper* v. *State*, 2 Ga. App. 730, 734.

utory presumption the State may prosecute any person who has contracted to perform service, received an advance of money, and then failed to perform without sufficient cause. Not only does this presumptive evidence of intent justify prosecution, but, as appears from the charge of the trial court in the instant case (R. 21–22), it is sufficient in itself to warrant a conviction. See *Barnes* v. *State*, 3 Ga. App. 333.

The undoubted *in terrorem* effect of this presumption is to coerce the performance of labor contracts. Since failure to perform automatically subjects the debtor to the risk of criminal prosecution, the statute operates as a threat to the innocent no less than to the guilty. By merely making an advance upon a promise to serve, the employer may utilize the coercive power of a threat of prosecution to compel the debtor to work out his debt.

We think it is clear that, to use the language of this Court in the *Bailey* case (219 U. S., at 238), the "natural and inevitable effect [of the statute] is to expose to conviction for crime those who simply fail or refuse to perform contracts for personal service in liquidation of a debt, and judging its purpose by its effect that it seeks in this way to provide the means of compulsion through which performance of such service may be secured."

Under the compulsion of the statute the debtor is not free to leave the service of the employer unless he is willing to incur the risk of prosecution and conviction for crim[illegible] He is in truth bound to the employer until he has worked out his debt or paid it. The condition or status thus created is peonage—compulsory service in payment of a debt. *Clyatt* v. *United States*, 197 U. S. 207, 215; *Bailey* v. *Alabama*, *supra*, at 242. Peonage, of course, is a form of involuntary servitude forbidden by the Thirteenth Amendment (*Slaughterhouse Cases*, 16 Wall. 26, 72; *Clyatt* v. *United States*, *supra*); and under the federal legislation prohibiting peonage (note 3, *supra*, p. 2) all state laws by which it should be attempted to enforce the "service or labor of any persons or peons, in liquidation of any debt or obligation," are null and void.

In the *Bailey* case this Court held (219 U. S., at 244–245) that the presumption created by the Alabama statute exposed the accused to conviction and punishment for crime upon proof merely that he had failed or refused to serve without paying his debt and that in its natural operation the statute furnished an instrument for the compulsion which the Thirteenth Amendment and the federal legislation forbid. That decision is squarely applicable here.[6]

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[6] In *Wilson* v. *State*, 138 Ga. 489, followed in its opinion in the case at bar (R. 39), the Supreme Court of Georgia endeavored to distinguish the Georgia act from the Alabama statute on the ground that whereas in Alabama the accused

II

THE GEORGIA STATUTE CREATES AN ARBITRARY AND UNREASONABLE EVIDENTIARY PRESUMPTION AND IS THEREFORE VIOLATIVE OF THE FOURTEENTH AMENDMENT

In *Bailey* v. *Alabama*, 219 U. S. 219, 245, this Court said that since the statute there involved was invalid under the Thirteenth Amendment and the federal legislation prohibiting peonage, it was unnecessary to consider whether it also violated the Fourteenth Amendment.

The appellent here argues that the Georgia statute infringes both the due process and equal protection clauses of the Fourteenth Amendment. Since we think the statute clearly violates the due process clause, we deem it unnecessary to consider whether it falls within the condemnation of the equal protection clause.

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could not testify at all as to his uncommunicated intent, in Georgia he could make a "statement" not under oath. This distinction is illusory. The fact remains that the accused is not a competent witness. Though the jury may give his statement credence, it is, of course, not testimony under oath. In any event, the holding in the *Bailey* case rested upon a broader base. The decision was that the State may not "punish the servant as a criminal for the mere failure or refusal to serve without paying his debt" and that it may not attempt to accomplish the same result indirectly "by creating a statutory presumption which upon proof of no other fact exposes him to conviction and punishment" (219 U. S., at 244).

The reasoning in the *Bailey* decision impels the conclusion that this Court necessarily deemed the similar presumption in the Alabama statute arbitrary. And in holding analogous statutory presumptions invalid under the due process clause this Court, in later decisions, relied upon its decision in the *Bailey* case. *Manley* v. *Georgia*, 279 U. S. 1, 6, 7; *Western & Atl. R. Co.* v. *Henderson*, 279 U. S. 639, 644.

As is made manifest by the *Bailey* decision, it cannot realistically be urged that the failure to repay money advanced or to perform the service for which it was advanced necessarily implies that the money was originally obtained with the intent not to perform the service, or make repayment. Nor is such a statute made any less arbitrary by the restriction that the accused may be found guilty only if he fails to repay or to perform the service contracted for "without good and sufficient cause." In every case in which civil liability is imposed for breach of contract the defaulting contractor has failed to carry out the terms of his undertaking without good and sufficient cause. The pragmatic effect of a statute of this character is, as this Court said in the *Bailey* case (219 U. S., at 236), that the accused stands "stripped by the statute of the presumption of innocence, and exposed to conviction for fraud upon evidence only of breach of contract and failure to pay."

CONCLUSION

The Georgia statute is repugnant to the Thirteenth and Fourteenth Amendments and the federal legislation prohibiting peonage. It differs in no substantial respect from the statute condemned by this Court in *Bailey* v. *Alabama*, 219 U. S. 219. The decision of the Supreme Court of Georgia upholding the statute should be reversed.

Respectfully submitted.

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P. 1

SUPREME COURT OF THE UNITED STATES.

No. 70.—October Term, 1941.

Ira Taylor, Appellant,
vs.
The State of Georgia.
} Appeal from the Supreme Court of the State of Georgia.

[January 12, 1942.]

Mr. Justice Byrnes delivered the opinion of the Court.

Appellant was indicted in the Superior Court of Wilkinson County, Georgia, for violation of §§ 7408 and 7409, of Title 26 of the Georgia Code. Section 7408 provides:

"Any person who shall contract with another to perform for him services of any kind with intent to procure money, or other thing of value thereby, and not to perform the service contracted for, to the loss and damage of the hirer; or after having so contracted, shall procure from the hirer money, or other thing of value, with intent not to perform such service, to the loss and damage of the hirer, he shall be deemed a common cheat and swindler, and upon conviction shall be punished as ~~prescribed in section 1069 [now section 1005] of the Code~~[1] for a misdemeanor."

And Section 7409 declares:

"Satisfactory proof of the contract, the procuring thereon of money or other thing of value, the failure to perform the services so contracted for, or failure to return the money so advanced with interest thereon at the time said labor was to be performed, without good and sufficient cause and loss or damage to the hirer, shall be deemed presumptive evidence of the intent referred to in the preceding section."[2]

The indictment alleged that appellant had entered into a contract with R. L. Hardie to perform manual labor for $1.25 a day until he had earned $19.50 at that rate, that he had done so with the intent not to perform the services, that he had thus obtained the $19.50 as an advance, that he had failed without good and sufficient cause to do the work, that he had failed and refused to

[1] Section ~~1069 [now section 1005]~~ of the Georgia Penal Code [Ga. Code (1933), Title 27, § 2506] provides: "Except where otherwise provided, every crime declared to be a misdemeanor shall be punishable by a fine not to exceed $1,000, imprisonment not to exceed six months, to work in the chain gang on the public roads, or on such other public works as the county or State authorities may employ the chain gang, not to exceed 12 months, any one or more of these punishments in the discretion of the judge . . . ."

[2] These two sections were enacted as sections one and two of the Act of August 15, 1903. Ga. Laws (1903) 90.

repay the $19.50, and that loss and damage to Hardie had resulted. Appellant demurred to the indictment, asserting that §§ 7408 and 7409, upon which it was based, were repugnant both to the Thirteenth Amendment and the Act of Congress passed pursuant to it,[3] and to the due process clause of the Fourteenth Amendment. The demurrer was overruled, exception was taken, and the case went to trial.

Hardie was the only witness for the State. He testified that the agreement had been made, that he had advanced the $19.50, that appellant had neither done the work nor returned the money, and that although appellant had said something about being sick, he had given no visible sign of it and had not been confined to bed. Under the statutes of Georgia[4] appellant could not testify under oath, but he was permitted to make an unsworn statement in which he generally denied that he and Hardie had made the agreement or that Hardie had paid him the $19.50. The trial judge charged the jury in the language of §§ 7408 and 7409. He refused to instruct the jury that these sections are repugnant to the Thirteenth and Fourteenth Amendments of the Constitution of the United States.

The jury returned a verdict of guilty and judgment of conviction was entered. Appellant moved for a new trial on the ground that §§ 7408 and 7409 violated provisions of both the federal and state Constitutions, and the motion was denied. On appeal, the conviction was affirmed by the Supreme Court of Georgia.

We think the conviction must be reversed. There is no material distinction between the Georgia statutes challenged here and the

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[3] The Thirteenth Amendment reads: "Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

"Section 2. Congress shall have power to enforce this Article by appropriate legislation."

U. S. C., Title 8, Section 56 reads: "The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in any Territory or State of the United States; and all acts, laws, resolutions, orders, regulations, or usages of any Territory or State, which have heretofore established, maintained, or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void."

U. S. C., Title 18, Section 444, reads: "Whoever holds, arrests, returns or causes to be held, arrested, or returned, or in any manner aids in the arrest or return of any person to a condition of peonage, shall be fined not more than $5,000, or imprisoned not more than five years, or both."

[4] Georgia Code (1933), Title 38, §§ 415, 416.

Alabama statute which was held to violate the Thirteenth Amendment in *Bailey* v. *Alabama*, 219 U. S. 219.[5] It is argued here, just as it was in the *Bailey* case, that the purpose of § 7408 is nothing more than the punishment of a species of fraud, namely, the obtaining of money by a promise to perform services with intent never to perform them. And the presumption created by § 7409 is said to be merely a rule of evidence for the trial of cases arising under § 7408. Actually, however, § 7409 embodies a substantive prohibition which squarely contravenes the Thirteenth Amendment and the Act of Congress of March 2, 1867.[6] Its effect is to authorize the jury to convict upon proof that an agreement has been reached, that money has been advanced on the strength of it, that the money has not been returned, that the appellant has failed or refused to perform the services "without good and sufficient cause," and nothing more. The necessary consequence is that one who has received an advance on a contract for services which he is unable to repay is bound by the threat of penal sanction to remain at his employment until the debt has been discharged. Such coerced labor is peonage. And it is no less so because a presumed initial fraud rather than a subsequent breach of the employment contract is the asserted target of the statute. It is of course clear that peonage is a form of involuntary servitude within the meaning of the Thirteenth Amendment and that the Act of 1867 is an "appropriate" implementation of that Amendment. *Clyatt* v. *United States*, 197 U. S. 207.

We are told that the manner in which these sections have been interpreted by the courts of Georgia rescues them from invalidity. It is urged that the phrase "without good and sufficient cause", which appears in § 7409, in effect requires proof of fraudulent intent at the time of making the contract and obtaining the money. But this argument is wide of the mark. The words "without good and sufficient cause" plainly refer to the failure to perform the services or to return the money advanced. Since the subsequent breach of the contract by the defendant, however capricious or reprehensible, does not establish a fraudulent intent at the initial stage of the transaction, the content which has been assigned to the phrase "without good and sufficient cause" by the Georgia courts is immaterial. See *Bailey* v. *Alabama*, 219 U. S. at 233-234.

Moreover, as the Court observed in the *Bailey* case, "the controlling construction of the statute is the affirmance of this judg-

[5] And cf. State v. Oliva, 144 La. 51; Ex parte Hollman, 79 S. C. 9.

[6] See note 3, *supra*.

ment of conviction." 219 U. S. at 235. The most that the jury could have found in the evidence here was proof that the contract had been made, that $19.50 had been advanced, that the appellant had failed to do the work or to return the money, and perhaps that this failure had been "without good and sufficient cause". The presumption created by § 7409 was thus essential to the conviction.

It is true that it appears from the record that the Supreme Court of Georgia regarded it as unnecessary to determine the sufficiency of the evidence to support the verdict because "the defendant relies solely on constitutional grounds". And it is also true that it appears from the record that in his brief in that court the appellant stated: "Inasmuch as the defendant in seeking to set aside his conviction relies solely on constitutional grounds, the evidence set out in the record is material only in so far as it relates to these grounds." However, the only possible construction of this statement, in the light of appellant's consistent attack upon the presumption created by § 7409, is that appellant agreed to waive any contention that the evidence was insufficient to establish the factors declared by that section to warrant the presumption of an initial intent to defraud. He cannot fairly be said to have conceded more. Consequently, the Georgia Supreme Court could not escape the necessity of passing upon the validity of the presumption raised by § 7409 in order to sustain the conviction.

We are aware that in *Wilson* v. *State*, 138 Ga. 489, the Supreme Court of Georgia held that *Bailey* v. *Alabama* does not require the invalidation of these sections. Its error in so doing arose from a misconception of the scope of the *Bailey* decision. To be sure, a judicially created rule in Alabama denied to a defendant the opportunity to make any kind of statement as to his uncommunicated motives, and this circumstance drew the notice of the Court. 219 U. S. at 228, 236. In Georgia, on the other hand, a defendant is permitted to make an unsworn statement if he chooses. But the opinion in the *Bailey* case leaves no doubt that this factor was far from controlling and that its effect was simply to accentuate the harshness of an otherwise invalid statute.

We think that the sections of the Georgia Code upon which this conviction rests are repugnant to the Thirteenth Amendment and to the Act of 1867, and that the conviction must therefore be reversed.

Reversed.

Mr. Justice ROBERTS took no part in the decision of this case.